

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN MARIANA ISLANDS

FILED

Clerk

District Court

JAN 10 2022

3 for the Northern Mariana Islands  
4 By JM  
(Deputy Clerk)

5 TIANMING WANG, et al., ) Case No. 18-cv-00030  
6 Plaintiffs, )  
7 )  
8 v. )  
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**CERTIFIED**

GOLD MANTIS CONSTRUCTION, )  
DECORATION (CNMI), LLC, et al., ) United States District Court  
Defendants. ) 1671 Gualo Rai Drive  
 ) Saipan, MP 96950  
 )  
 )  
 )  
 ) December 29, 2021  
 ) 8:40 a.m.

TRANSCRIPT OF PROCEEDINGS

SHOW CAUSE HEARING

BEFORE THE HONORABLE RAMONA V. MANGLONA,  
CHIEF JUDGE

Heidi M. Doogan, RPR  
Federal Official Court Reporter  
1671 Gualo Rai Drive  
Saipan, MP 96950

1 APPEARANCE OF COUNSEL:

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15 FOR THE THIRD-PARTY WITNESS:

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19

20

21 ALSO PRESENT:

22 Cui LiJie, Third-Party Witness  
Yue Wang, Interpreter

23

24

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2 (In open court:)

3 THE CLERK: All rise. The United States District  
4 Court for the Northern Mariana Islands is now open and ready  
5 for transaction of business.6 The Honorable Ramona V. Manglona, Chief Judge,  
7 presiding.8 THE COURT: All right. Good morning, everyone.  
9 Please be seated.

10 MR. SAN NICOLAS: Good morning, Your Honor.

11 THE CLERK: If Your Honor please, this is civil  
12 action 18-00030, Tianming Wang, et al. versus Gold Mantis  
13 Construction Decoration (CNMI), LLC, et al., coming up for a  
14 show cause hearing.

15 Will the parties please state their appearance.

16 THE COURT: Plaintiff?

17 MR. HALEGUA: Good morning, Your Honor. This is  
18 Aaron Halegua for Plaintiffs.

19 THE COURT: All right. Good morning, Mr. Halegua.

20 MR. HALEGUA: Good morning.

21 MR. BERLINE: Good morning, Your Honor.  
22 Bruce Berline for Plaintiffs, as well.23 THE COURT: And, good morning, Mr. Berline. And then  
24 turning around the room. Let me just recognize the folks in  
25 the courtroom.

1                   Well, I guess, Mr. Yumul, if you wish, you can have a  
2 seat at Counsel's table. It's a little bit more comfortable  
3 over there.

4                   MR. YUMUL: Thank you, Your Honor.

5                   THE COURT: A matter of perspective, but...

6                   MR. YUMUL: Good morning.

7                   THE COURT: Good morning, Mr. Yumul. And I see you  
8 have your --

9                   MR. YUMUL: Tao and Mr. Chi.

10                  THE COURT: Mr. Tao -- Tao Xing, and How Yo Chi is  
11 present as well in the courtroom.

12                  But as to counsel for IPI, we have Mr.?

13                  MR. WEINER: It's Mr. Weiner, Judge. How are you?

14                  THE COURT: Good morning, Mr. Weiner, from Saipan.

15                  MR. WEINER: Good morning, Your Honor.

16                  THE COURT: And then, as our third-party witness?

17                  MR. SAN NICOLAS: Good morning, Your Honor. Joey San  
18 Nicolas, appearing on behalf of Ms. Cui Lijie, and she's  
19 accompanied by Ms. Wang Yue, Y-U-E.

20                  THE INTERPRETER: Good morning, Your Honor.

21                  THE COURT: Good morning, Mr. San Nicolas, Ms. Cui  
22 Lijie, and Ms. Yue.

23                  THE INTERPRETER: Good morning, Your Honor.

24                  THE COURT: Good morning.

25                  All right. The matter's here for, basically, two

1 purposes: One is the issue of the order to show cause  
2 regarding the balance of the TransPerfect payment of \$1,065;  
3 that's the order to show cause.

4 MR. SAN NICOLAS: Yes, Your Honor.

5 THE COURT: I note that there was a motion that was  
6 filed by Ms. Cui Lijie for a reconsideration about a finding of  
7 contempt. If you read the Plaintiffs' response, basically, I  
8 concur with the Plaintiffs' reading of the procedural posture  
9 on this particular motion.

10 MR. SAN NICOLAS: Yes, Your Honor.

11 THE COURT: Are you also on -- now, on the same page,  
12 Mr. San Nicolas, regarding --

13 MR. SAN NICOLAS: Yes, Your Honor. If I may --

14 THE COURT: -- the order to show cause?

15 MR. SAN NICOLAS: If I may, Your Honor?

16 THE COURT: Yes.

17 MR. SAN NICOLAS: At this time, Ms. Cui has  
18 instructed me to advise the Court that her position is that she  
19 does concede to the amounts that were assessed by TPS. Not  
20 just the 1,065, but I believe there is an additional, if I'm  
21 not mistaken, three -- 3,000.

22 THE COURT: I think the only issue was the balance of  
23 1,065. There were recognized payments --

24 MR. SAN NICOLAS: Yes. Yes.

25 THE COURT: -- partial payments along the way.

1 MR. SAN NICOLAS: Yes, Your Honor. So the 1,065  
2 was -- was paid. Now, with respect to the fees -- the  
3 attorneys' fees, at this point the 4,336, and the overarching  
4 request for payment for all of the TPS Services, Ms. Cui is  
5 prepared to advise the Court that she does not dispute those  
6 fees, neither the TPS fees, nor her -- nor the attorneys' fees.  
7 And she's willing to make a payment today and make additional  
8 payments through -- throughout the next month, Your Honor.

11 MR. SAN NICOLAS: Your Honor, I can take off my mask.

12 THE COURT: Yes.

13 TransPacific Legal Services, TLS. That is the  
14 invoice that was left unpaid. There was a deadline under the  
15 receipt or the invoice, and that was not paid pursuant to the  
16 invoice. And the protocol required Ms. Cui to pay the services  
17 of TLS when it comes to providing information to the Court  
18 regarding any of the ESI obtained --

19 MR. SAN NICOLAS: Yes.

20 THE COURT: -- in this proceeding. So...

21 MR. SAN NICOLAS: Your Honor, so -- so that 1,065 was  
22 initially disputed.

25 MR. SAN NICOLAS: Yes.

1                   THE COURT: -- I might have heard something  
2 different.

3                   MR. SAN NICOLAS: Now, since -- since October, there  
4 has been at least one consultation with Mr. Langton at TPS and  
5 that was to retrieve the iCloud information. And that was  
6 pursuant to a protocol, which we do not dispute. So we  
7 anticipate that that additional cost is included in what is --  
8 what is the -- should be the balance.

9                   THE COURT: Okay. So for purposes of the order to  
10 show cause, I want to keep it narrow and --

11                  MR. SAN NICOLAS: Sure.

12                  THE COURT: -- simple. Staying with the 1,065. And  
13 this is on an order to show cause for purposes of a civil --  
14 potential civil contempt, not a criminal contempt.

15                  MR. SAN NICOLAS: Yes, Your Honor.

16                  THE COURT: And in this instance, there's the issue  
17 of performance of a compliance.

18                  MR. SAN NICOLAS: Yes.

19                  THE COURT: And then there's the issue of the damages  
20 for failure to comply.

21                  MR. SAN NICOLAS: And that -- that would be the  
22 attorneys' fees, I believe, Your Honor.

23                  THE COURT: Correct.

24                  MR. SAN NICOLAS: And so, Ms. Cui also concedes to  
25 that. We do have a number; however, we don't believe we can

1 pay the entire TPS and the attorneys' fees today, but we can  
2 make a substantial payment today, Your Honor.

3 THE COURT: Okay. Well, that's one of the most  
4 easiest order to show cause that we've had in this matter, I  
5 would say.

6 Mr. Berline or Mr. Halegua, my intention is to accept  
7 Ms. Cui's acknowledgement of her failure to comply with this  
8 lawful, clear Court order to pay the services of TLS. By  
9 finding her in contempt for her failure to pay, given that she  
10 apparently has, since the deadline and since the motion for an  
11 order to show cause was filed, paid that sum. The only remedy  
12 at this point is to assess the damages, which is Plaintiffs'  
13 attorneys' fees.

14 And as to the amount for the attorneys' fee, it is  
15 focused on the OSC, not for any other activity.

16 And that is, in fact --

17 MR. SAN NICOLAS: Yes, Your Honor.

18 THE COURT: -- Ms. Cui's position?

19 MR. SAN NICOLAS: Yes, Your Honor. And with -- if I  
20 may continue, Your Honor, with respect to the payments.

21 THE COURT: And the next question is when will  
22 payment be made --

23 MR. SAN NICOLAS: Yes, Your Honor.

24 THE COURT: -- for the attorneys' fees?

25 MR. SAN NICOLAS: Ms. Cui is prepared to make a

1 payment of \$6,000 today.

2 THE COURT: Well, has it come -- is it even up that  
3 high at this point, Mr. Halegua?

4 MR. SAN NICOLAS: What we're aware of is 4,336 --

5 THE COURT: Okay.

6 MR. SAN NICOLAS: -- in attorneys' fees, but we  
7 anticipate that there --

8 MR. HALEGUA: Your Honor?

9 THE COURT: All right.

10 So, Mr. Halegua, for purposes of the attorneys' fees?

11 MR. HALEGUA: Yeah. I think things are getting a bit  
12 muddled between Mr. San Nicolas and the numbers he's putting  
13 out for different -- some of the fees are for TransPerfect,  
14 some are our fees. I agree with the Court, we should keep it  
15 streamlined.

16 I think the first question is: I did not hear any  
17 dispute or -- to the fact that she be held in contempt, and I  
18 believe it's important that the Court go through that motion of  
19 finding her in contempt based on the noncompliance, and the  
20 fact that we've been brought to this point.

21 THE COURT: Yeah. Mr. Halegua, that is what Mr. San  
22 Nicolas has been stating, that she's been authorized -- he's  
23 been authorized to admit on behalf of the client, and I'm  
24 prepared to accept her admission to having violated the Court's  
25 order and find her in contempt. This only issue is attorneys'

1 fees at this moment in time.

2 MR. HALEGUA: Okay. So I just wanted to make sure  
3 that was -- that piece was clear as to what she was agreeing  
4 to.

5 In terms of the attorneys' fees, I, at Mr. San  
6 Nicolas's request, you know, yesterday, the day before the  
7 hearing, to Mr. Berline, once it was relayed to me, calculated  
8 our attorneys' fees as best as I could. There was a slight  
9 error in the number I sent to Mr. San Nicolas. It should be a  
10 hundred dollars less. So the total fees are at least \$6,008.

11 Oh, I'm sorry. I'm looking at the wrong number. The  
12 total fee should be as \$4,236 for the attorneys' fees up until  
13 this point --

14 THE COURT: Okay.

15 MR. HALEGUA: -- for Mr. Berline and myself.

16 THE COURT: Then --

17 MR. HALEGUA: I just didn't want to -- one thing I --  
18 before we get to the TransPerfect. I would just say that every  
19 penny that, you know, Ms. Cui claims that she is unable to pay  
20 at this time and needs a payment plan for, is going to be money  
21 that Mr. Berline is going to have to put on his credit card in  
22 order to charge. So I just think that should be kept in mind  
23 as, you know, as Ms. Cui tells us that she needs more time and,  
24 you know, we're the ones who will have to come forward and pay  
25 Ms. -- pay TransPerfect's fees while -- while we wait for

1 Ms. Cui.

2 THE COURT: All right. So having heard from the  
3 Plaintiffs. Mr. San Nicolas, at this time, and I see Ms. Yue  
4 talking to Ms. Cui, I want to make sure Ms. Cui understands.

5 Ms. Cui, you're here in court with an interpreter.  
6 And at this time, I am going to accept your admission to the  
7 violation of the Court's order regarding the payment of fees  
8 for TransPerfect Legal Services, in particular, the previously  
9 disputed \$1,065. It was disputed after the due date for that  
10 service. And then Plaintiff was forced to file the motion for  
11 an order to show cause at the last hearing.

12 After the motion was filed, but before I granted the  
13 motion to issue an order to show cause, you, through your  
14 attorney, had indicated you were still going to continuously  
15 object to it, and so that triggered more attorneys' fees. And  
16 now we're here to answer -- to have -- to have you fully  
17 answer. And based on your admission, I am going to find you in  
18 contempt for failing to pay the fees to TLS timely. You have  
19 since paid that amount, and, so, therefore, no prospective  
20 order regarding that payment will be entered. And that's only  
21 as to that particular invoice.

22 Mr. San Nicolas indicated there were some more  
23 services rendered. That, obviously, will be ongoing and  
24 separate. As to the attorneys' fees, that is the damages that  
25 I'm going to award Plaintiffs for having to bring the motion

1 for an order to show cause, as well as pursue the motion with  
2 the detailed facts to support the finding of contempt.

3 MR. SAN NICOLAS: If Your Honor could give the  
4 translator a minute --

5 THE COURT: Yes, I'm going to give her a moment.

6 MR. SAN NICOLAS: -- to translate.

7 THE COURT: Was there any question from Ms. Cui?

8 MR. SAN NICOLAS: Yes, Your Honor. She was inquiring  
9 whether this was criminal.

10 THE COURT: No, it's a civil.

11 MR. SAN NICOLAS: And I told her it was not. If  
12 Your Honor would like to speak to that, I -- but I just --

13 THE COURT: Well, you clarified that it's a civil --

14 MR. SAN NICOLAS: It's civil, yes.

15 THE COURT: -- finding of contempt?

16 MR. SAN NICOLAS: Your Honor, she just wanted to get  
17 a clarification that there was a statement that the 1065 was  
18 submitted and the Court is aware that the 1065 was paid?

19 THE COURT: Yes, I've acknowledged that.

20 MR. SAN NICOLAS: And she's inquired --

21 THE COURT: Yes.

22 MR. SAN NICOLAS: She's asking whether that is -- the  
23 Court is aware.

24 THE COURT: I am acknowledging it. The reason why  
25 I'm entering the finding of civil contempt is because the order

1 was clear as to when it was due, is when the service is  
2 rendered, and it's invoiced by the service provider. And when  
3 you failed to pay it timely, and, despite your argument for  
4 reasonable dispute, that, obviously, was not brought back to  
5 the service provider. It was -- from my review of the filings,  
6 it appears to be a reading that the purpose for that affidavit  
7 was really a part of the litigation that was brought to Court.  
8 And it was quote, unquote, "more so in favor of the Plaintiff,"  
9 whereas this service provider is like any expert, it's supposed  
10 to come up with a finding. It's not to make an opinion for or  
11 against --

12 MR. SAN NICOLAS: Yes.

13 THE COURT: -- an individual party. It's for the  
14 benefit of the Court. And so, if there is an error made by  
15 this professional, Mr. Langton, on behalf of TLS, and you find  
16 another expert to say so, then that will be reasonable. But  
17 obviously we have come this far to conclude that it wasn't an  
18 issue of the accuracy of the finding. It's more of, well,  
19 you -- we had an evidentiary hearing, and that witness was, and  
20 services was, procured by the Plaintiff, more so for the  
21 Plaintiffs' benefit, as opposed to for the Court's benefit.

22 MR. SAN NICOLAS: Okay.

23 THE COURT: So hopefully that can be clarified.

24 MR. SAN NICOLAS: Yes.

25 THE COURT: You can clarify that with -- with Ms. Cui

1 through Ms. Yue.

2 MR. SAN NICOLAS: Your Honor, she says she  
3 understands that it is not criminal, yes.

4 THE COURT: Okay. So with that finding of civil  
5 contempt and that -- that you, basically, purged the contempt  
6 for purposes of the 1,065-dollar payment, the issue is damages  
7 for violating the order, which is the attorneys' fees that was  
8 incurred by Plaintiffs to bring the matter. And having  
9 reviewed everything, even after being noticed by Plaintiff that  
10 if there's a failure to pay and Plaintiffs were forced to bring  
11 the matter to Court, there will be consequences, well, here it  
12 is.

13 MR. SAN NICOLAS: Yes, Your Honor.

14 THE COURT: So I am ordering that Ms. Cui, the third  
15 party, make the payment. The attorneys' fees right now is  
16 \$4,236. You indicated she had the ability to pay up to 6,000.  
17 So --

18 MR. SAN NICOLAS: Yes, Your Honor.

19 THE COURT: -- that should be paid today in full to  
20 Plaintiffs through, I guess, Mr. Berline, as local counsel.  
21 And he can put that in the trust account and get all these  
22 other reimbursements done. That will resolve the current order  
23 to show cause before the Court.

24 MR. SAN NICOLAS: Thank you, Your Honor.

25 THE COURT: Now, as to final words in regarding that

1 point. I understand Counsel for Plaintiffs' point about these  
2 issues. It really goes to what I've been saying all along to  
3 each and every representative of IPI, whether it be, in this  
4 case, Mr. Yumul, understands on behalf of the company, or for  
5 Ms. Cui herself, which is, there has to be consequences when a  
6 party doesn't comply with a lawful court order.

7 And if the party violates the order and forces the --  
8 any other party to incur expenses, that is going to be put back  
9 on the person who caused it. And I just made the comment  
10 regarding if there was a reasonable challenge to say the  
11 finding of the expert through another expert, that will be  
12 reasonable to say that was in error, disallow it. And I would  
13 even think that that professional would own up to it and say,  
14 "Mea culpa, I misread something." That's the way it should  
15 work. But not the -- from what I could determine, it was more,  
16 "Well, he prepared it for their benefit," as in Plaintiffs, as  
17 opposed to the truth-seeking process that the company was  
18 required to do regarding the science of all this ESI.

19 MR. SAN NICOLAS: Yes, Your Honor.

20 THE COURT: So to the extent that there's going to be  
21 added costs, these will be borne by the -- basically, the party  
22 that caused it. So that is a -- a sensitive -- time-sensitive  
23 issue, because, as pointed out, when Ms. Cui did not make the  
24 timely payments, Plaintiffs had to step in her shoes and incur  
25 the expenses. So that is not how this was intended.

1                   All right. Let me leave that issue and go to the  
2 next issue set for today. This is basically the big issue  
3 we've been dealing with.

4                   MR. SAN NICOLAS: Yes, Your Honor.

5                   THE COURT: The ESI backup data. And the Court did  
6 previously find Ms. Cui in contempt of court for failing to  
7 satisfy the Court's order regarding disclosing all the  
8 information she had pertaining to at least two pieces of  
9 evidence that indicate that there's ESI data somewhere else.

10                  One is the finding by TLS that there was a backup  
11 data made on the cell phone that she tendered back on  
12 March 21st, 2021, I guess, Eastern Standard Time, March 22nd  
13 Saipan time, because we were in the future for purposes of the  
14 east coast. And last week I -- before I make the finding of  
15 contempt made the simple question of: Is Ms. Cui aware of not  
16 only her iCloud account, but an iTunes account? And I want to  
17 correct myself, because I believe and hope that -- Counsel can  
18 correct me if I'm wrong -- it's not technically an iTunes  
19 account, but it's, basically, using the iTunes application to  
20 extract data (DAT-auh) or data (DATE-auh) from a device, which  
21 is called making a backup, and then transferring all that data  
22 to another device. And so it is, nevertheless, a use of that  
23 application with some indicia that there was backup done. So  
24 that means there's data that was placed somewhere. And we've  
25 been trying to find out where that somewhere was, and that's

1 what we're looking for as an explanation.

2 MR. SAN NICOLAS: Yes, Your Honor.

3 THE COURT: So that's based on physical evidence that  
4 was found by TLS. I have not seen or heard any reading or  
5 discussion about this particular evidence until this, I guess,  
6 amended declaration that was just filed -- things are kind of  
7 moving kind of quickly again -- was it just yesterday, from  
8 Mr. Estrellado, yesterday?

9 MR. SAN NICOLAS: Yes, Your Honor. If I may explain.

10 THE COURT: So that will be the first issue and then  
11 we'll talk about the QQ.com account. So let's stay with the  
12 first issue.

13 MR. SAN NICOLAS: Yes.

14 THE COURT: I saw late yesterday afternoon there was  
15 some filings and I -- that indicate some individuals  
16 accompanied Ms. Cui to the Computer Electronic Outlet here in  
17 Saipan --

18 MR. SAN NICOLAS: Yes, Your Honor.

19 THE COURT: -- on March 22nd, 2021. As well as  
20 another -- and that's based on a declaration by, is it a  
21 Mr. Hongdan Chen --

22 MR. SAN NICOLAS: Yes, Your Honor.

23 THE COURT: -- as well as Ms. Guan Manni?

24 MR. SAN NICOLAS: Guan Manni.

25 THE COURT: And she we know from the prior hearings.

1 That she accompanied, not only Ms. Cui, but two other  
2 individuals, a Mr. Liu and Ms. Zhu.

3 MR. SAN NICOLAS: Zhu.

4 THE COURT: And that pertains to the cell phone that  
5 was subsequently sent to New York, so there are two, shall we  
6 say, locations or particular areas. So based on all that  
7 training, apparently, you had at least an hour-and-a-half of  
8 training; do you have any updates --

9 MR. SAN NICOLAS: Yes, Your Honor.

10 THE COURT: -- to explain this information that we've  
11 been looking for?

12 MR. SAN NICOLAS: Yes, Your Honor.

13 She did -- she was trained last Thursday by  
14 Mr. Estrellado, who was assisted by Mr. How Yo Chi. Since  
15 then, we have been advised by Mr. Estrellado, I think provided  
16 it in his own declaration, that -- and this was also something  
17 that we were considering even prior to his advice, which was  
18 getting to the actual time and date of the backup. We do not  
19 dispute -- we have nothing to dispute a backup occurred on  
20 March 22nd. In fact, Mr. Estrellado acknowledged that there  
21 was a backup on March 22nd.

22 THE COURT: Just by looking at that Plist file?

23 MR. SAN NICOLAS: Yes, Your Honor. So by -- by  
24 figuring out what time that it occurred, we -- we will know  
25 that it will either have been done by one of the -- some

1 individual who had contact with it. We -- we want to find out  
2 whether it was done by the Computer Electronic Outlet store.

3 Again, we maintain that there was never any  
4 instruction to do a backup or to delete anything from her  
5 phone, other than to just fix it. But we -- we would like to  
6 know exactly what time. And I -- Counsel has already reached  
7 out to Mr. Langton, sent him an e-mail, I haven't received a  
8 response, but we -- what we understand is the Purplebuddy List,  
9 the Cellebrite report that Mr. Langton refers to in his initial  
10 report, shows the exact time and date. That's not reflected in  
11 the report, it's just a -- like a snippet of that Cellebrite or  
12 Pbuddy List. So the entire page would actually show, and this  
13 is according to Mr. Estrellado.

14 And we have also consulted with another expert out of  
15 Miami, and he -- he confirmed that that's -- that's the way to  
16 kind of pinpoint exactly when that happened. And so if -- if,  
17 in fact, it happened --

18 THE COURT: When you say "pinpoint," we're talking  
19 about date and hour versus --

20 MR. SAN NICOLAS: Yeah.

21 THE COURT: -- pinpoint location?

22 MR. SAN NICOLAS: If we know the date and hour, then  
23 we know it's at the computer outlet store. If -- if it shows  
24 the date and the hour on -- as to when it occurred, then --  
25 then that will reveal where it was done, in our opinion.

1 Because those are the only -- that was the only computer store  
2 that she went to on that day, and Guan Manni. And Guan Manni  
3 has already stated that she did not do a backup.

4 So what we are requesting from Mr. Langton is the  
5 entire P- -- Pbuddy List, so that it could show --

6 THE COURT: Have you made that -- submitted that  
7 request from him?

8 MR. SAN NICOLAS: We -- we sent him an e-mail,  
9 Your Honor.

10 THE COURT: Okay.

11 MR. SAN NICOLAS: We haven't received -- I could  
12 provide a copy, we sent it several days ago to Mr. Langton. We  
13 didn't receive it. But we don't think it should be that  
14 difficult, because he already has the entire report. What he  
15 provided for in his July initial report was that, according to  
16 the PBuddy List, there was a backup on that date.

17 What we'd like to know, and if he shows us the entire  
18 page, it will show us the exact time, it's called a time-stamp,  
19 and that's -- that's important, according to Mr. Estrellado and  
20 Mr. -- his name is Jesus Pena from E Forensics in Miami. That  
21 that could tell you exactly when it happened. And if it  
22 happened at the same time that she was at the Computer  
23 Electronic store, then we know where it happened, and we would  
24 have to pursue a -- Computer Electronics Outlet. According to  
25 Mr. Hongdan, who's provided a statement, he claimed that he did

1 not fix it. And that he gave the phone back. However -- yes,  
2 that he had diagnosed it, but was not able to fix the phone.  
3 If we had information that it was, in fact, the backup was  
4 created at the time that -- that Ms. Cui was there, then we  
5 would know where to go to to get that data.

6 If we -- if it requires a subpoena, Your Honor, we  
7 would issue the subpoena.

8 THE COURT: I mean, Mr. Chen's declaration talked  
9 about diagnosed the phone, but we don't know what activity,  
10 what actions he took. Did he -- you know, we don't know the  
11 details of that diagnosis. And I'm not sure what the fix was  
12 for.

13 MR. SAN NICOLAS: Well, if Your Honor would recall,  
14 according to Ms. Cui, she had always had issues with her phone,  
15 this WeChat or -- would -- would just disappear or there would  
16 be the Circle of Death that would occur, and she would  
17 occasionally bring it to Guan Manni and she would bring it --  
18 and she did -- and she brought it to Computer Electronic Outlet  
19 on that date. So we have no reason to believe that it did not  
20 occur. In fact, Mr. Estrellado concurs with Mr. Langton that  
21 some backup happened.

22 What Ms. Cui is saying, she had nothing to do with a  
23 backup on that date. But if there was, then it would -- we  
24 would want to know exactly what time it was so we could use  
25 that as a basis to pursue Mr. Hongdan Chen for more

1 information.

2 THE COURT: Okay. So, basically, the current  
3 explanation for this Plist file that indicates that there was a  
4 backup, the current explanation is, it must have been based on some  
5 visit to someone that Ms. Cui turned to, to get assistance to  
6 fix her phone, whether it be Computer Electronics Outlet,  
7 through the owner, Mr. Hongdan Chen, or even Ms. Guan Manni,  
8 who at least had a limited access to the phone. Although her  
9 statement is she used her own WeChat phone number, but no  
10 reference at all to any use, either by herself, or by Ms. Cui  
11 or anyone else for an iTunes account.

12 MR. SAN NICOLAS: Yes. With -- with respect to  
13 Mr. Guan Manni [sic], yes.

14 THE COURT: It's silent, is what I'm saying.

15 MR. SAN NICOLAS: Yes.

16 THE COURT: There's no reference at all as to a use  
17 or lack of a use of an iTunes application to backup the cell  
18 phone; why is that?

19 MR. SAN NICOLAS: From Ms. Guan Manni?

20 THE COURT: Yes.

21 MR. SAN NICOLAS: Well, she has -- as an officer of  
22 the Court, it was inquired of her, and she said she had nothing  
23 to do with the -- any backup to iTunes. We could have -- make  
24 it so that it can be amended and provided to the Court, but...

25 THE COURT: Yes, that's the issue.

1 MR. SAN NICOLAS: Yes. Yes. Yes.

2 THE COURT: Not -- not only explaining why and how it  
3 could happen, but to the individuals who had access to the  
4 phone around that date, whether any of them used the iTune  
5 application.

6 And you're saying Ms. Guan Manni did not use the  
7 iTunes application on this device.

8 MR. SAN NICOLAS: Yes, Your Honor. And that we will  
9 seek an amendment of that.

10 THE COURT: You can amend her declaration to reflect  
11 that.

12 MR. SAN NICOLAS: Yes. Yes.

13 THE COURT: Now, as to Mr. -- is it Mr. Liu?

14 MR. SAN NICOLAS: Hanqin Liu, Your Honor.

15 THE COURT: Hanqin Liu, yes. I mean, there was  
16 passwords given to the technician. So are we talking about  
17 passwords to iTunes, Apple ID password?

18 MR. SAN NICOLAS: Yes, Your Honor, it's exactly that.  
19 It's an Apple ID. And what we understand is that it is iTunes  
20 as well.

21 THE COURT: So the likelihood right now then is, the  
22 iTunes backup occurred at Mr. Chen's shop or store, the  
23 Computer Electronics Outlet?

24 MR. SAN NICOLAS: That is what we wish to confirm,  
25 Your Honor. We suspect it, but we would need the time-stamp

1 that's reflected on the Purplebuddy List report.

2 THE COURT: If the time-stamp was obtained, would  
3 that even identify the device that was used?

4 MR. SAN NICOLAS: Well, it would identify the exact  
5 time.

6 THE COURT: Understood, that's already clear.

7 MR. SAN NICOLAS: And we would hope that there could  
8 be some identification of -- of a computer.

9 THE COURT: Mr. Estrellado did not make that clear  
10 for you?

11 MR. SAN NICOLAS: Um...

12 THE COURT: You're relying on Mr. Estrellado's  
13 expertise at this point, right, to tell you?

14 MR. SAN NICOLAS: Yes, Your Honor. Mr. Estrellado  
15 and Mr. Pena, who was -- who's been communicating with Mr. How  
16 Yo Chi, Your Honor.

17 THE COURT: Okay. I'm already clear about the fact  
18 that Mr. Estrellado concedes that based on this plist file  
19 that there was a backup on an iTunes application. And the date  
20 seems to be well-taken based on the declaration from  
21 Mr. Langton from TLS. The date and time would, basically,  
22 convince Ms. Cui, as well as, I guess, Mr. Chen, that -- that  
23 backup occurred at a time, let's say, if it was in the middle  
24 of the night, Mr. Chen would say, "See, you weren't here."

25 If it was during the working hours, likely.

1 MR. SAN NICOLAS: There is a time frame that we know  
2 that she was there. And if it's within that time frame, then  
3 we -- we believe that the information should be with -- with  
4 Computer Electronic Outlet. If it's outside of that, then,  
5 Your Honor, then we -- we can confirm whether it was at  
6 Computer Electronic Outlet, based on the time-stamp that is on  
7 the P- -- Pbuddy List, Your Honor.

8 So we've already made the request to Mr. Langton, and  
9 we would hope that he can give us the -- he already did the  
10 report. It's just that he only gave a small snippet of -- of  
11 the Purplebuddy List report, and that's actually attached as  
12 Exhibit 3, I believe, to his July -- his first declaration,  
13 Your Honor.

14 THE COURT: Well, we have the reports that were made.  
15 And you say the reports does not contain this particular  
16 information you're looking for?

17 MR. SAN NICOLAS: No, Your Honor.

18 THE COURT: All right. Let me then turn to the  
19 Plaintiffs for any comments or concerns.

20 Mr. Halegua?

21 MR. HALEGUA: Thank you, Your Honor. This all seems  
22 very reminiscent of, you know, a time where there was a lost  
23 SIM card and we tried to place that on a third party and say it  
24 was all the fault of Fely Forbes. It's also very reminiscent  
25 of when we were told, you know, that Mr. Estrellado put

1 something in his sworn declaration, but then counsel stood  
2 before us and said, "Oh, we" -- "you know, we have this plan,  
3 we need to subpoena everything from Apple. We need to spend  
4 three weeks doing this and analyzing this, that, and the  
5 other." And it turned out that that was completely  
6 unnecessary. And as far as I know, I don't think we've even  
7 heard the result of this Apple subpoena.

8 I think it's just a continued pattern of sending us  
9 on wild goose chases for information that either, A, was  
10 available six months ago or they could have started pursuing  
11 six months ago, or is completely not relevant, without getting  
12 to the heart of the matter. I think there's an extreme  
13 problem, that, one, again, we, basically, have Counsel  
14 testifying to matters that he is not expert in -- with no  
15 offense to Mr. San Nicolas, but I think self-admittedly so. If  
16 Mr. Estrellado was -- you know, has something to say, he put it  
17 in a declaration. He knows how to do that. Right.

18 If they spoke to someone in Florida, that person  
19 also -- Mr. San Nicolas knows how to prepare a declaration and  
20 put it before this Court. You know, we are asking that Ms. Cui  
21 be put in jail for the fact that the last six months they knew  
22 about this iTunes file and backup and have done, essentially,  
23 nothing to explain that to Plaintiff and the courts. But now,  
24 they cannot be bothered to have these people appear themselves  
25 at this hearing. They can't even put forward a declaration

1 under the penalty of perjury to say what Mr. San Nicolas is now  
2 telling us. My understanding, and I don't claim to be an  
3 expert, is -- because this was never really raised -- is that  
4 you can't tell the precise time from the Plist file, and it's  
5 not going to give you the information that you want to give.  
6 And this is all just another wild goose chase. And then we're  
7 going to get into a fight back and forth about whether or not  
8 this file has a time-stamp or should have the time-stamp or  
9 whatnot.

10           But I think Mr. San Nicolas, under the Court's  
11 questioning, answered what we want to know anyway: It doesn't  
12 really matter what the time-stamp shows, according to them,  
13 despite having for six months not admitted that there ever was  
14 an iTunes application used and there was never a backup made,  
15 and there was no initialization that occurred, right, now they  
16 seem to be conceding that six months later.

17           And according to them, the only possible place that  
18 it could have occurred, regardless of what the time-stamp  
19 shows, is allegedly this computer store. So how come six  
20 months ago, you know, we don't have a subpoena to Mr. Hongdan  
21 Chen? I just want to point out that Ms. Cui -- all the  
22 declarations that were submitted to the Court this morning or  
23 yesterday, literally add no new information that we did not  
24 already know.

25           Ms. Cui in her initial ESI declaration, which was

1       June 10th, 2021, talks about going to the Computer Electronic  
2       Store. We knew that in June. It is not in dispute. It was  
3       always known and accepted that she went to the computer store,  
4       right. Ms. Cui knew that. How Yo Chi knew that. All these  
5       people who went with her knew that. Her Counsel knew that.  
6       Right, this is not new information: Oh, my gosh, all of a  
7       sudden there was this time she went to the computer store, and  
8       they must have done something, right.

9           They knew that she went there in June. Mr. Langton  
10       found this file in June, July, August. And then in the  
11       subsequent months they've done nothing. They never requested  
12       this Plist file to say we need to determine the time, right.  
13       They never subpoenaed Mr. Chen. They never came forward and  
14       said, "We think that he, you know, without my permission,  
15       apparently, you know, did a backup of my phone onto his  
16       computer, deleted everything off of my phone, and installed  
17       this backup back onto it." If that's the allegation of what  
18       happened, first of all, we have this statement from Hongdan  
19       Chen that's not even under oath, so it's worth, essentially,  
20       nothing. So why is -- why in the past four months has Mr. San  
21       Nicolas, who knows very well how to issue a subpoena and told  
22       us all about how he did one before, why has he not subpoenaed  
23       this person? Why has he not subpoenaed this computer? Why  
24       haven't we taken all of these actions in the last four months?

25           Instead, here's four declarations that tell us

1 exactly what we already know, right. Here's a training for  
2 Ms. Cui, as if the training were the end in itself. The point  
3 of the training was so that Ms. Cui could then tell us: Okay,  
4 did you have an iTunes application? Was something created?  
5 Instead, we have the training that happens. We get four  
6 declarations that tell us things we already know. And we get  
7 nothing from Ms. Cui, right.

8 So what's the result of this 1.5-hour training?  
9 Nothing. Right. No declaration. So Ms. Cui does not feel  
10 compelled to clarify the fact that she made this bold statement  
11 under oath in her declaration about no iTunes being used, never  
12 being used, she never directed it being used. It sounds like  
13 today she's conceding and admitting that an iTunes backup was  
14 made and installed onto her phone.

15 I just think that we've been given the runaround for  
16 so long and so many times, and the one obvious path, if Ms. Cui  
17 was interested in actually getting the truth as opposed to  
18 hiding it, would have been to pursue whatever happened at this  
19 computer store. Instead it was obfuscation, no backup  
20 occurred. Even sitting here today under the threat -- Your  
21 Honor's threat of imprisonment at the December 22nd hearing,  
22 apparently, that doesn't inspire even the thought to have a  
23 sworn declaration or the idea to issue a subpoena. Instead,  
24 let's go on this wild goose chase of looking for the  
25 time-stamp. Even though there's only one possible source of

1 where this may have occurred.

2 I think it's time for the games to stop, frankly,  
3 Your Honor. I think we're all very fed up by this and being  
4 taking down roads with no logical reason and no logical  
5 expected beneficial outcome. And I think we know what needs to  
6 be done. I think Ms. Cui should be under a penalty. The ball  
7 is in her court to get the evidence, to come forward, and  
8 explain exactly what happened.

9 And until you do, it's not our job, or the Court's  
10 job, to spoon-feed you the next step every time. To tell you  
11 to issue a subpoena. To tell you to compel, you know, the  
12 person to come for deposition. To subpoena evidence. Right.  
13 You gather the evidence. You make your case. And then the  
14 sanction will be lifted. Until you do, I think, you know,  
15 that's great, the sanction should continue to accrue.

16 I personally do not believe, based on what we've seen  
17 and the four declarations that were submitted yesterday, that  
18 the \$200 sanction is sufficient for the billionaire Ms. Cui to  
19 feel compelled to do very much of anything. I think we now  
20 have firm evidence of that.

21 And I think she should be under a meaningful  
22 sanction. And when she feels that she has purged that  
23 contempt, she can notify the Court of that fact. Otherwise, I  
24 think we come back here every week, and, basically, have to  
25 write the script for her of the next thing we would like her to

1 do. But, really, the burden should be on her. She's known  
2 about this fact for more than four months.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Halegua.

5 All right. Mr. San Nicolas, this is on your client  
6 for her ongoing order to show cause regarding --

7 MR. SAN NICOLAS: Yes, Your Honor.

8 THE COURT: -- the ESI data, having found her in  
9 contempt last week and trying to get all of this explanation.  
10 What is your final response?

11 MR. SAN NICOLAS: Yes, Your Honor. In response to  
12 what Mr. Halegua stated, Ms. Cui has never conceded that she  
13 had anything to do with any backup. She's never conceded that.  
14 What she concedes is that there appears to be a backup that was  
15 made. And what she wants to find out is who did it. She's  
16 saying that she had nothing to do with it, that it could have  
17 been done at the Computer Electronics store. And we have every  
18 intention of pursuing that. We did -- Mr. Halegua can attest  
19 to it, did reach out to request for stipulation to continue  
20 this so that we could get all of our experts ready and get  
21 something from Mr. Hongdan Chen in order to present, but time  
22 was not on our side.

23 What we did is we got a statement. We've already  
24 reached out to another expert. And we've gotten already a  
25 request by Mr. Estrellado to get the Purplebuddy List, and

1 we've reached out to Mr. Langton for that information.

2 We are on the same side when it comes to finding out  
3 when it was made and how it was made. We've disputed that she  
4 had anything to do with it. We have no reason to dispute  
5 Mr. Langton's contention that it was created, but we are saying  
6 she, Ms. Cui, did not put up a Guan Manni or a Hongdan Chen or  
7 anybody in this world to backup her data on March 22nd, 2021.

8 So what we're asking --

9 THE COURT: What -- but she did reach out to people  
10 to fix her cellphone.

11 MR. SAN NICOLAS: That is correct. She's reached out  
12 to people to fix it.

13 THE COURT: So her words is to fix it, and the  
14 recipient who knows how to handle cellphones will say, "Well,  
15 you do things like backup."

16 MR. SAN NICOLAS: Yes, Your Honor.

17 THE COURT: And you're saying they're not one in the  
18 same?

19 MR. SAN NICOLAS: Well, to fix it means to restore  
20 the WeChat or the phone.

21 THE COURT: How do you restore data?

22 MR. SAN NICOLAS: Exactly, Your Honor. And so what  
23 we want to know is if -- if Mr. Hongdan Chen did do it on that  
24 day, then we -- we need to pursue him for that. We have --  
25 he'd been approached before, he said that he did not --

1                   THE COURT: Wouldn't that be not to pursue him, but  
2 it's -- it's Ms. Cui? And I just focused you on these -- we're  
3 not playing semantics here. Her words are to fix the phone.  
4 She didn't want to go to IT&E and buy a brand new one, saying  
5 the device is not working. She's saying, "I've been using this  
6 phone. I want this one fixed." Why? Because you just said,  
7 she wants that information in there, it's the data, that's the  
8 difference. Yes?

9                   MR. SAN NICOLAS: Your Honor, the main reason for  
10 Ms. Cui wanting to -- to phone -- to use her phone is to take  
11 pictures and to use WeChat, that's primarily what she used the  
12 phone for. But it wasn't for there to be an iTunes backup, to  
13 take -- take information and restore it. I mean, that's not,  
14 in her mind, what was requested.

15                  Now, if it was done and we know that it's -- it's in  
16 Mr. Hongdan Chen's possession or in his computer, then we will  
17 pursue that.

18                  THE COURT: Even if it's solely for WeChat and photos  
19 only and not for music, videos, or any other mediums, the point  
20 is, she wanted the photos she took to be restored or have  
21 access to it when it somehow -- when the device somehow failed  
22 to give her access as opposed to basically getting a new  
23 cellphone to take photos with.

24                  MR. SAN NICOLAS: Yes, Your Honor.

25                  THE CLERK: Getting a new cellphone with a new phone

1       number to communicate via WeChat. It's like picking up another  
2       phone.

3                    MR. SAN NICOLAS: Yes, Your Honor.

4                    THE COURT: And that's the point is the "fix the  
5        phone," may be her choice of words, but it's, in the ESI world,  
6        it's, well, that means I need to find and gain access to your  
7        account so I can get the data. Otherwise, open up a new cell  
8        phone SIM card number and take new photos; move forward.

9                    MR. SAN NICOLAS: Well, Your Honor, fixing the phone  
10       for Ms. Cui is merely to be able to access WeChat. Her request  
11       was never to back anything up. Now, if there is a backup, then  
12       we'd like to get it too so that we can present it to the Court.  
13       That has always been the order of the Court. So we don't --  
14       we're not trying to hide -- hide the ball here. We want to  
15       find it just as much as Mr. Halegua wants to find it. And we  
16       think this is the way that we can do it, Your Honor, is by  
17       getting that.

18                   And we will -- we will prepare the subpoena. And we  
19       will try to obtain that ESI data from Mr. Hongdan Chen, but we  
20       would also like to get the information from Mr. Langton that  
21       really pinpoints the time and date.

22                   And according to Mr. Estrellado, that is contained  
23       within the Pbuddy List report.

24                   THE COURT: Now, assuming that the report for that  
25       Plist file will indicate that the timing of the backup occurred

1       during the visit at Mr. Chen's shop. You go back over there,  
2 what do you expect to do and find?

3                    MR. SAN NICOLAS: Oh, we're going to subpoena.

4                    THE COURT: But what's going to happen? What are you  
5 going to subpoena?

6                    MR. SAN NICOLAS: Mr. Hongdan Chen, and we will ask  
7 him, or we'll depose him, or we'll get the computer that was  
8 supposedly used for the -- for the backup, if it's, in fact --  
9 he -- if he is, in fact, the one who did it.

10                  THE COURT: Are you not able to go over there and  
11 just ask him that right now without a subpoena?

12                  MR. SAN NICOLAS: We've attempted in the past, Your  
13 Honor, and we were not successful. All we got was the  
14 statement that he diagnosed it, and that was it. And he did  
15 not fix it.

16                  So, yeah, yes, Your Honor, we -- we are going to use  
17 that opportunity, use this opportunity, to get it from him  
18 through a subpoena.

19                  THE COURT: According to Mr. Lui's declaration,  
20 paragraph three: When we entered the store, I handed Ms. Cui's  
21 phone to the technician to fix her phone. I saw Ms. Zhu give  
22 the account passwords to the technician. After waiting --  
23 paragraph four: After waiting for roughly 20 minutes or more,  
24 the technician came out and gave me back the phone.

25                  So you're saying that 20 minutes, there -- there was

1 no access to an iTunes application to backup the cellphone?

2 MR. SAN NICOLAS: At that point, no. There was no  
3 access to WeChat or iTunes. She brought it to -- she  
4 subsequently brought it to Ms. Guan Manni, who mana- -- who by  
5 the time the phone was brought to Ms. Guan Manni, she was able  
6 to access the -- the phone. It was -- it was -- somehow it was  
7 restored.

8 THE COURT: And that's the backup?

9 MR. SAN NICOLAS: Yes.

10 THE COURT: All right.

11 MR. SAN NICOLAS: So what we think is whatever  
12 happened in those 20 minutes, what could have occurred was the  
13 backup, was the backup that Mr. Langton is referring to.

14 THE COURT: So now that is the explanation?

15 MR. SAN NICOLAS: Yes.

16 MR. HALEGUA: Sorry, could you repeat that? I really  
17 did not understand. What -- what is now the explanation?

18 THE COURT: Mr. Halegua, I just pointed out that  
19 according to Mr. Lui's declaration, Ms. Cui's phone, basically,  
20 was tendered to a technician to -- to a technician over at  
21 Computer Electronics Outlet in Garapan, with a password.

22 MR. HALEGUA: Right.

23 THE COURT: And in that 20 minutes, they come -- came  
24 out, gave back the cellphone. And from the outlet, they went  
25 over to Ms. Guan Manni, and that's when she was able to access

1 the WeChat app. But in order to access the WeChat app, it had  
2 to be restored at the -- at the outlet without that 20-minute  
3 fixing. It was not the ultimate one, but it's a step. It was  
4 to restore, and then go to Ms. Guan Manni to get the actual  
5 WeChat to work. So the data was actually restored by the  
6 technician. So it's all in that 20 minutes. And that's what  
7 Mr. San Nicolas believes would be shown, that if it's down to  
8 that period of time.

9 MR. HALEGUA: I --

10 THE COURT: And I think the question is: Was the --  
11 a technician -- is the technician the same person as the owner,  
12 Mr. Hongdan Chen?

13 MR. SAN NICOLAS: Yes, Your Honor.

14 THE COURT: Okay.

15 MR. SAN NICOLAS: It's a husband and wife,  
16 Your Honor, owners.

17 THE COURT: It's a husband-and-wife shop?

18 MR. SAN NICOLAS: Yes.

19 THE COURT: Okay.

20 MR. HALEGUA: Your Honor, may I ask one clarifying  
21 question?

22 THE COURT: Yes.

23 MR. HALEGUA: So, Mr. San Nicolas, what is -- you say  
24 you have the time window. What is the period of time that they  
25 were at the shop?

1 MR. SAN NICOLAS: On the 22nd between --

2 MR. HALEGUA: Yes.

3 MR. SAN NICOLAS: One moment, Your Honor.

4 (Pause in the proceedings.)

5 MR. SAN NICOLAS: A time period of between 12 and  
6 maybe one -- 1:30.

7 THE COURT: Twelve noon to 1:30 in the afternoon?

8 MR. SAN NICOLAS: About -- about that time frame.

9 She knows that she was at Ms. Guan Manni's by 2 o'clock.

10 THE COURT: I'm sorry, she knows?

11 MR. SAN NICOLAS: Ms. Cui says that she recalls being  
12 at Ms. Guan Manni by about 2 p.m. So about an hour before she  
13 went to Ms. Guan Manni, she went to the Computer Electric  
14 Outlet in Garapan.

15 THE COURT: Okay.

16 MR. HALEGUA: Your Honor, I'm not going to rehash the  
17 objections I've made so far. I mean, I do think we've been  
18 down this road. I think what is happening is entirely  
19 inappropriate, which is we have Mr. San Nicolas, basically,  
20 testifying, once again, about what fix means to Ms. Cui, right.  
21 Pulling words from a declaration, an unsigned declaration of  
22 Hongdan Chen, that we don't even know if it was translated. We  
23 don't know if his first language is English, it's not  
24 notarized. It's not under perjury. Using the word fix to  
25 suggest what that means to Ms. Cui and what instructions were

1 given. Once again, Ms. Cui did not even feel the need to  
2 submit a declaration after Your Honor told her the gravity of  
3 what we're talking about, you know, told her that the next step  
4 is imprisonment. We don't have any explanation from her as to  
5 what her expectations were at that store, what she learned from  
6 her training, why she gave the passwords to him.

7 I think there's a very -- I mean, there's also a very  
8 critical point, we're not just talking about making a backup.  
9 We are talking about, according to Mr. San Nicolas, what would  
10 have had to happen is that Hongdan Chen, or whoever did this,  
11 would not just create a backup of her phone, or have a backup  
12 from somewhere, right, they need to wipe clean all of the data  
13 that was existing on the phone. I would be shocked if a  
14 technician came forward and said, "I decided to wipe clean this  
15 person's entire phone without their permission." It will come  
16 out, I suppose.

17 But I think even this story that we're being spun, as  
18 if this sort of rogue technician in 20 minutes, you know, just  
19 decided to delete everything off her phone and had a backup  
20 from somewhere that he installed back on it, is extremely,  
21 extremely suspect for so many reasons. But be that as it may,  
22 we do not have a declaration -- declaration from Ms. Cui, all  
23 we have is sort of this test- -- you know, quote, unquote,  
24 "testimony" from Mr. San Nicolas. And we have the fact that  
25 they just slept on all of these things for four months, right,

1 waiting until Plaintiffs and the Court closed down all of their  
2 other explanations and then we're going to come back to: Okay.  
3 Great. Now, we can finally pin it on Hongdan Chen, or whoever  
4 the technician is.

5 Again, it's about a burden. She's been found in  
6 contempt. We have the physical evidence. She's had four  
7 months. Don't think it's Plaintiffs' job or the Court's job to  
8 try to take these snidbits of declarations and facts and  
9 potential, possible theories being spun by Mr. San Nicolas and  
10 try to make a coherent case for it, right. The burden is now  
11 clearly on her to come forward and say: You put together your  
12 package, right. Give us the sworn declarations. Give us the  
13 physical evidence. Give us the expert declarations. When you  
14 think you have an explanation that is plausible, we will look  
15 at it. We will respond. And we will consider purging the  
16 contempt.

17 Right now, what's being asked is, basically, for  
18 Your Honor and myself to try to make sense of what I would say  
19 purposely makes no sense, right. Because they are -- it's  
20 quite clear to me that they've been hiding the ball for a very,  
21 very, very long time. And it's not that they've had a, you  
22 know, come to Jesus moment all of a sudden, and it's all going  
23 to be clear. It's been games and hiding for four months. It's  
24 still games and hiding about we're going to send this guy,  
25 right -- I mean, why don't we have a declaration from

1 Mr. San Nicolas about all of the steps he's taken in the last  
2 four months to get Hongdan Chen to turn over his computer,  
3 right? To tell him what steps he took. Asking him about  
4 whether he wiped clean the phone. That he went there on this  
5 day. He went there on that day. Right. There's none of that.  
6 There's literally no evidence in the record to show that  
7 they've done anything to pursue this prior to yesterday.

8 So I think they're taking us on another wild goose  
9 chase. I can easily say they haven't met their burden of  
10 providing an explanation. And I strongly caution against it  
11 becoming the Court's problem and our problem to come up with an  
12 explanation. I believe that burden rests with Ms. Cui. And  
13 until she can meet it, I think she should be under very severe  
14 sanctions because nothing's motivated her in the past four  
15 months for Ms. Cui to come clean and tell us what happened.

16 THE COURT: All right. I think I've heard enough  
17 arguments on this issue of the iTunes backup, as shown by the  
18 physical evidence through the June 2021 report regarding a  
19 March 22nd, 2021, Chamorro Standard Time, I guess March 21st  
20 Eastern Standard Time backup.

21 Before I act and address that point, let me turn to  
22 the other issue that was raised as some evidence. This time  
23 it's not physical, but the testimonial evidence regarding the  
24 QQ account that was witnessed by Ms. Fely Forbes regarding the  
25 cellphone that showed her Apple ID. So, that's the last of the

1 evidence --

2 MR. SAN NICOLAS: Yes.

3 THE COURT: -- regarding ESI that says there's  
4 evidence to show there's another source of ESI that has not  
5 been produced. Mr. San Nicolas, what is your response?

6 MR. SAN NICOLAS: Yes, Your Honor. As we understand  
7 it, the QQ account was with respect to the iCloud. That is  
8 when Ms. Forbes was asked to do a backup for her new phone so  
9 that she could back up into the iCloud and then bring that --  
10 that information, that ESI, back into the new phone that was  
11 purchased at IT&E. And it was during that moment when Ms. --  
12 according to Ms. Forbes, she said that she noticed a QQ  
13 account, Your Honor.

14 Ms. Cui maintains that she did not create an iCloud  
15 backup account using QQ. She maintains that the only backup to  
16 iCloud that she made, that she requested was on May 9 --  
17 May 10th CNMI time. And that the -- the extent of her use of  
18 QQ was to communicate with friends of hers. She maintains that  
19 she has never asked anybody on her behalf to open up an iCloud  
20 account with the QQ.com.

21 We did point out, Your Honor, to the Court that --

22 THE COURT: Can I ask this question: Based on what  
23 we have so far with the cellphone that is in New York, was  
24 there any physical evidence about a QQ account being used in  
25 any way? Actually even --

1 MR. SAN NICOLAS: In New York?

2 THE COURT: Well, the cellphone that was transmitted  
3 to TLS.

4 MR. SAN NICOLAS: Your Honor, we did highlight that  
5 there was no information about a QQ account from Mr. Langton's  
6 analysis. Mr. Langton's pointed out only the Gmail account,  
7 Your Honor.

8 THE COURT: There's one by -- in fact, its Mr. Tao  
9 Xing's Gmail account, was it not, that was found in the  
10 reports?

11 MR. SAN NICOLAS: No, Your Honor. It was Ms.-- oh,  
12 the -- the reference to another account was with respect to the  
13 computer --

14 THE COURT: Ah --

15 MR. SAN NICOLAS: -- that was sent to --

16 THE COURT: Sure.

17 MR. SAN NICOLAS: -- to TransPerfect.

18 THE COURT: That's right. So it's a Tao Xing Gmail  
19 account --

20 MR. SAN NICOLAS: Yes. Yes.

21 THE COURT: -- for the computer?

22 MR. SAN NICOLAS: Yes, computer.

23 THE COURT: But not for the cellphone?

24 MR. SAN NICOLAS: Not for the cellphone.

25 THE COURT: Okay.

1                   MR. SAN NICOLAS: So what we pointed out in the  
2 December 8th declaration was that the report from New York  
3 really didn't -- didn't mention the QQ.com account. Now, in --  
4 I know Mr. Halegua's going to accuse me of testifying, but I'm  
5 just going to repeat what -- what was stated to me.

6                   THE COURT: By whom?

7                   MR. SAN NICOLAS: By Ms. -- Ms. Cui.

8                   THE COURT: Okay.

9                   MR. SAN NICOLAS: That if you look at her phone,  
10 one -- one app that you will see is a QQ.com application. And  
11 according to Ms. Cui, that -- that's the only way that if  
12 you're to look at her phone, you would think that she used the  
13 QQ.com because the application was on her phone. Now, she's  
14 never used it. She doesn't use it. It's on her phone. And  
15 she hasn't used it to backup any iCloud account. And so what  
16 would -- in the December 8th declaration that Ms. Cui  
17 submitted, she highlighted the fact that even in Mr. Langton's  
18 report, and it's attached again to his July -- July 25th or  
19 July of this year, his initial report, that the Gmail.com, the  
20 Gmail account, was linked to the iCloud account, not a QQ.com  
21 account. And so going back to Ms. Forbes, what may have  
22 happened is that she saw the QQ.com application on her phone,  
23 but we have no physical evidence to show that it was -- it was  
24 linked to her iCloud. The only evidence of the iCloud that we  
25 are aware of, is the report by Mr. Langton, and it's not --

1 it's not referenced. It's not linked to it. The only  
2 statement is from Ms. Fely Forbes, who did the backup on  
3 May 10th. But Ms. --

4 THE COURT: But do we have a statement from Ms. Cui  
5 that she does not have a QQ iCloud account? Instead of a Gmail  
6 iCloud account, is there a QQ iCloud account? Gmail to access  
7 iCloud versus QQ.com to access the iCloud?

8 MR. SAN NICOLAS: So Ms. -- Ms. Cui had a QQ account,  
9 and she used it only for communicating with her friend. The  
10 app on her phone was not used for any other purpose, but it was  
11 just there.

12 THE COURT: Okay. You're repeating what you just  
13 said and I heard it and understood it. But my question is:  
14 QQ.com allows for, like Gmail, it's a means of an account for  
15 communication, like you just said. My question is: Was that  
16 QQ.com account ever used to access and create an iCloud  
17 account?

18 MR. SAN NICOLAS: And her statement is no, she did  
19 not use a QQ.com account to access iCloud.

20 The passwords that she gave to Mr. Langton, and to, I  
21 believe, Ms. -- Ms. Forbes were Gmail accounts. And a long  
22 password. I believe Mr. Langton stated that it wasn't  
23 accessible using that password. Eventually, we were able to  
24 overcome the -- I guess, the -- a block in November. But even  
25 in July, he still had information on the iCloud account. And

1 it's contained in his report.

2 THE COURT: I'm sorry.

3 MR. SAN NICOLAS: And it doesn't show QQ.com.

4 THE COURT: Can you repeat that part? I didn't  
5 appreciate all that.

6 MR. SAN NICOLAS: Yes, Your Honor. If I may,  
7 Your Honor.

8 THE COURT: This is as to the QQ account again, okay.  
9 And you're referring to which?

10 MR. SAN NICOLAS: I'm going to -- I'm opening  
11 Mr. Langton's report, Your Honor.

12 THE COURT: He made several. Which one?

13 MR. SAN NICOLAS: So it would be Document 380,  
14 Exhibit 3.

15 THE COURT: Yes. I have that. And Exhibit 3 is a  
16 Cellebrite extraction report?

17 MR. SAN NICOLAS: Yes, Your Honor.

18 THE COURT: And what about it?

19 MR. SAN NICOLAS: I'm sorry, Your Honor, it's -- it's  
20 the last -- Your Honor, if I -- if Your Honor could just give  
21 me just a minute. It's the last report, Your Honor.

22 THE COURT: The last report made, the declaration,  
23 you mean, made by Mr. Langton?

24 MR. SAN NICOLAS: Yes, the last declaration,  
25 Your Honor.

1                   THE COURT: Okay. Yes, the -- ECF 380 was filed back  
2 on August 2nd.

3                   MR. SAN NICOLAS: Yes, Your Honor. If Your Honor  
4 would recall, Mr. Langton did get access to the file -- or to  
5 the iCloud in November.

6                   THE COURT: Yes. After Mr. Lemons was sending us  
7 down the subpoena route.

8                   MR. SAN NICOLAS: Yes, Your Honor.

9                   THE COURT: So you're looking for Mr. Langton's last  
10 declaration?

11                  MR. SAN NICOLAS: Yes, Your Honor.

12                  MR. HALEGUA: I believe it's 459-1, Your Honor.

13                  THE COURT: Four, five, nine. Thank you, Mr.  
14 Halegua.

15                  So that's a third-party witness Cui Lijie's status  
16 report regarding her iCloud account. So it's 459-3.

17                  MR. SAN NICOLAS: Yes, Your Honor. If Your Honor  
18 could --

19                  MR. HALEGUA: I believe -- I believe dash 1.

20                  THE COURT: Oh, okay.

21                  MR. SAN NICOLAS: 459-1, paragraph four. It refers  
22 to the Gmail account, Your Honor.

23                  THE COURT: Okay.

24                  MR. SAN NICOLAS: G133211@gmail.com.

25                  MR. HALEGUA: This is November, right? Are you

1 talking about the November 24th, 2021, declaration?

2 MR. SAN NICOLAS: Yes, Your Honor. Yes, Aaron.

3 Mr. Halegua.

4 THE COURT: Okay. So ECF 459 is Ms. Cui's status  
5 report. And at ECF 459-1 is the fifth declaration of  
6 Mr. Jonathan Langton.

7 MR. SAN NICOLAS: Yes, Your Honor.

8 THE COURT: And the paragraph number you're referring  
9 to, is it paragraph 7?

10 MR. SAN NICOLAS: No, Your Honor, paragraph 4.

11 THE COURT: Four.

12 MR. SAN NICOLAS: That is the Gmail account --

13 THE COURT: Correct.

14 MR. SAN NICOLAS: -- that Mr. Langton used to access  
15 it, Your Honor.

16 THE COURT: Yes. That's what -- we're not talking  
17 about a Gmail address to access an iCloud account; the question  
18 is a QQ account.

19 MR. SAN NICOLAS: Yes, Your Honor. If Your Honor  
20 could refer to Document 380 again.

21 THE COURT: Yes.

22 MR. SAN NICOLAS: This is Exhibit Number 3. About  
23 two-thirds down in the Cellebrite report.

24 THE COURT: Yes.

25 MR. SAN NICOLAS: It's a cell -- it says: Extraction

1 report, Apple iPhone. Under device information name, if you go  
2 about halfway down, it says, "Apple ID" --

3 THE COURT: So --

4 MR. SAN NICOLAS: -- and the value shows the Gmail  
5 account.

6 THE COURT: Right.

7 MR. SAN NICOLAS: And this was from the -- the July  
8 report, Your Honor. And it says: iCloud account present; it  
9 said true. And so what -- what we're saying, Your Honor, is  
10 that even as far back as July when this report was created, and  
11 more recently, in the fifth declaration from December -- I'm  
12 sorry, from November -- it shows that the iCloud is linked or  
13 the Apple ID is linked -- the Apple Cloud -- iCloud and Apple  
14 ID are linked to the g133211@gmail.com, not a QQ.com account.

15 THE COURT: This is the phone settings. I mean,  
16 basically, can someone else log on with their own account to  
17 that device, such as a QQ account? I mean, it's a phone's  
18 setting for automatic, but you can always log off to one and  
19 punch in another. Yes?

20 MR. SAN NICOLAS: I'm sorry, Your Honor, could you  
21 please repeat it.

22 THE COURT: So this device information regarding the  
23 settings shows the Apple ID is set to Ms. Cui's Gmail account.

24 MR. SAN NICOLAS: Yes, Your Honor.

25 THE COURT: My point is: Doesn't access to the

1       iCloud allow for the entry of another Apple ID account, such as  
2       a QQ account, to, yet, access the iCloud from the same device,  
3       but it's not part of the, shall we say, default settings?

4           Unless you're saying any and all Apple ID accounts  
5       that's ever been used on this device is listed here as the  
6       value. I guess these are questions that more so Mr. Langton  
7       and Mr. Estrellado would know.

8           MR. SAN NICOLAS: Yes, Your Honor.

9           THE COURT: I don't know.

10          MR. SAN NICOLAS: I can only speak to -- 'cause all  
11       the attorneys were present when we provided the Gmail  
12       account --

13          THE COURT: Right.

14          MR. SAN NICOLAS: -- and password and were prompted  
15       with the new, I guess, password or code, which had occurred, I  
16       think, on November 17th. And so from -- from my personal  
17       knowledge, just having been present when we coordinated with  
18       Mr. Estrellado and Mr. Langton was the only information that  
19       was provided, was the Gmail account and the, I guess, Apple  
20       gives a new verification code and -- and that was it. There's  
21       no QQ.com reference or information that was provided,  
22       Your Honor.

23           And so what we're saying, Your Honor, is that Ms. --  
24       Ms. Cui maintains that she never created an account using  
25       QQ.com. And just based on what I know, the only way that you

1 could access that iCloud account was if you had that Gmail  
2 account and you had the -- the new phone. Because even if you  
3 gave the Gmail account, it would send a verification code to  
4 the new phone. So we were ready to receive it, and we gave it  
5 to Mr. Langton.

6 THE COURT: But did that answer my question which is:  
7 Can another e-mail account, such as a QQ account, be used as an  
8 Apple ID on this same device and not be picked up in this  
9 analysis?

10 MR. SAN NICOLAS: Again, I'm not an expert. And I  
11 think the experts are best to answer that, but question.

12 THE COURT: And those are the --

13 MR. SAN NICOLAS: I just know with respect to what I  
14 observed on November 17, was only that Gmail account.

15 THE COURT: I understand, Mr. San Nicolas. Let's not  
16 repeat the one that we understand.

17 MR. SAN NICOLAS: Yes.

18 THE COURT: Let's focus on what is not explained --

19 MR. SAN NICOLAS: Yes.

20 THE COURT: -- and how we can get that done. I guess  
21 one is to ask the experts.

22 MR. SAN NICOLAS: Yes.

23 THE COURT: And I -- there's a lot missing, and,  
24 obviously, that is a frustration that I and Mr. Halegua are  
25 saying. All of this was supposed to be acted upon since the

1 filing back in July -- or it was June, when the -- the reports  
2 were made. And then we have, again, in August. And you're  
3 still trying to educate yourself, let alone an expert.

4 I think the bottom line is, you need to have your  
5 expert be the one to speak --

6 MR. SAN NICOLAS: Yes, Your Honor.

7 THE COURT: -- and eliminate the possibilities.  
8 Because unless they're eliminated, it's -- it's a fair reading  
9 that she did have access to an iCloud account based on  
10 testimony by an individual, Who, "I personally witnessed her  
11 using a QQ account."

12 And it was at the initialization of her cellphone.  
13 And this is all again on the cellphone. We've distinguished  
14 the computer and any other devices.

15 MR. SAN NICOLAS: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. SAN NICOLAS: If Your Honor requires an  
18 evidentiary hearing of some sort, we will certainly contact  
19 these experts to provide testimony in answer to Your Honor's  
20 questions, Your Honor.

21 THE COURT: Well, it looks like you need to go back  
22 to your experts and get them to file the declarations, because  
23 in this instance, it's sounding like there's a better  
24 understanding of the way that ESI or technology works. And  
25 with this better understanding, there's now an acknowledgement,

1 at least, physical evidence, that has been identified is  
2 credible to say that there was a backup done. And the question  
3 is: Is this still available?

4 And this is on Ms. Cui's burden. And given what she  
5 has stated, her age and her lack of expertise in this area, it  
6 is incumbent that the people around her that have, in fact,  
7 tried to assist her, submit sworn declarations in order for the  
8 Court to properly consider them as admissible evidence. So  
9 when -- when we have this report that says it was only showing  
10 a Gmail account as the -- appears to be the default account, I  
11 don't think it closes the opportunity for another account to be  
12 used. And if that other account can be used, why not use it in  
13 front of your presence between yourself and your client,  
14 Mr. San Nicolas, with your expert as an investigator to assist  
15 you to confront it? Because if you don't, then I can  
16 reasonably conclude that an i -- third-independent eyewitness  
17 saw a QQ account attached an Iaccount [sic] and this is her  
18 area of expertise.

19 MR. SAN NICOLAS: Yes, Your Honor.

20 THE COURT: Apparently, all of this complicated,  
21 technical part is sending us on a wild goose chase here to  
22 identify, one, the fact that there is another ESI device which  
23 is wherever that cellphone was backed up.

24 MR. SAN NICOLAS: Uh-huh.

25 THE COURT: And how, if it was backed up, basically,

1 who decided to delete most of it and why. That needs to be  
2 explained. That is what we're looking for under penalty of  
3 perjury.

4 MR. SAN NICOLAS: Yes, Your Honor.

5 THE COURT: And inasmuch as Mr. Halegua would  
6 encourage me to make a decision today and find that -- Ms. Cui  
7 in contempt because she has not adequately explained what  
8 happened to all of this ESI, that at this point in time is  
9 undisputed, existed at one point, meaning it was from the  
10 cellphone to some other device, likely a computer, to back it  
11 up and then do something with the same cellphone, should I say.  
12 From the cell phone that is in New York, it was somehow  
13 tendered to someone with an iTunes application to backup and  
14 possibly restore the applications that were on the cellphone,  
15 let alone the data. Because now you're saying, "Well, it was  
16 just to get the WeChat." That's an application. But the  
17 information on it or the photos, I don't know if those are the  
18 things that she also wanted or those were deleted. But it's  
19 undisputed at this point that there was a backup. And if  
20 that's the case, there has to be an explanation of where it is,  
21 is it still accessible, and that needs to be tendered to the  
22 third-party TLS to store. Do you understand, Mr. San Nicolas?

23 MR. SAN NICOLAS: Yes, Your Honor.

24 THE COURT: And you agree?

25 MR. SAN NICOLAS: Yes, Your Honor.

1 THE COURT: That's the goal from the beginning.

2 MR. SAN NICOLAS: That's the goal from the beginning,  
3 Your Honor. We're -- we're asking for an opportunity to find  
4 where that -- where that is. We have our suspicions, and we  
5 will act on those suspicions, Your Honor.

6 THE COURT: All right.

I know Mr. Halegua is not too eager to let this  
linger any further for -- especially into the new year. But,  
Mr. Halegua, before I put anyone in jail, I give people an  
opportunity to present the whole truth. And if there's some  
basis here to explain these things, I will give Ms. Cui one  
last chance to properly answer it, not through counsel and  
hearsay, but through admissible evidence. Mr. San Nicolas,  
you're going to need to get yourself primed up --

15 MR. SAN NICOLAS: Yes, Your Honor.

21 MR. HALEGUA: Your Honor, may I clarify something?

22 THE COURT: Yes.

23 MR. HALEGUA: I mean, I -- I just would like to say,  
24 you know, of course, our first instinct is never that anyone  
25 should be incarcerated for something. I think we have been

1 quite patiently looking at a course of behavior that now spans  
2 literally 11 months, starting from Ms. Cui's deposition. And,  
3 you know, I think we identified this QQ account months and  
4 months and months ago. And, frankly, with all due respect to  
5 the Court, I don't see any meaningful difference between the  
6 conversation and colloquy with counsel that happened today and  
7 that which happened a week ago, and really one that happened  
8 months ago, where we very explicitly -- I really don't think we  
9 could be anymore clear that we are not looking for the content  
10 of her use of the QQ application. That we are concerned about  
11 an Apple ID, you know, with the QQ.com address. We literally  
12 are still hearing from Ms. Cui's side that she hasn't used the  
13 application and I have zero confidence after, you know, the  
14 second or third time going through this, that, you know,  
15 without -- I hate to be so Pavlovian about this, but without  
16 anything changing on the ground, I just don't see us getting a  
17 different response the third time.

18 The other thing I wanted to point out is -- you know,  
19 so I think, first, again, I think it comes down to the burden.  
20 And, again, it's not that we want to put Ms. Cui in jail. I  
21 think a more significant fine would also be extremely  
22 appropriate. I think the wisdom of the way that the contempt  
23 is ordered and established is, back in August Your Honor found  
24 Ms. Cui in contempt, right, and ordered her to, you know,  
25 disclose all ESI backups that exist. She was held in contempt

1 back in August. I think that what we're talking about is  
2 sanctions continuing to accrue until she comes forward and  
3 purges them, right, that's what creates the urgency. That's  
4 what creates the incentive, right, to move quickly.

5 I fear that the more, you know, chances we give her,  
6 right, that is just time for delay. I think the sanction  
7 should happen now if she is -- if she is, as Mr. San Nicolas  
8 represents, wholly dedicated to finding out the truth and  
9 taking every action and acting on every suspicion, she can be  
10 free of contempt by tomorrow, right? All those declarations,  
11 the effort, statements, the files that they need, right, they  
12 can gather all things together, put together a very  
13 comprehensive and persuasive explanation of all these things as  
14 quickly as they want. Nobody is standing in their way.

15 I'm sure Your Honor, if somebody didn't respond to a  
16 subpoena, would sign that motion to compel. We wouldn't oppose  
17 it. You would sign it the next day. All of the balls are in  
18 her court. All of the tools are available to her. It's just  
19 the -- any sense of urgency or real feeling that she needs to  
20 comply that is missing.

21 I also just need to point out: In terms of  
22 Fely Forbes, this sort of half suggestion by Counsel, right,  
23 with any -- without any further sworn statements from Ms. Cui  
24 or Mr. How Yo Chi who was there, you know, as if Ms. Fely  
25 Forbes is, you know, making this up or confused, I just take

1 strong objection to.

2 I remind the Court of the pattern where we went on  
3 this whole wild goose chase of Ms. Fely Forbes losing Ms. Cui's  
4 SIM card, right. How Yo Chi basically said under oath in a  
5 declaration that that's what happened. He gave her two cards.  
6 Ms. Cui said she gave How Yo Chi two cards. And that when they  
7 came back from Fely Forbes, it wasn't there anymore, right.  
8 And all of that turned out to be a lie, right.

9 Ms. Fely Forbes testified before this Court at a  
10 hearing that Mr. San Nicolas was at, Clyde Lemons was at, two  
11 experienced attorneys, talked about the QQ account. If there  
12 was any suspicion that she has made up this entire thing, they  
13 had a chance to cross examine her and they didn't even contest  
14 it or bring it up. For the last four months, they've had a  
15 chance to depose her. Why haven't they deposed her and say:  
16 Hey, you made up -- weren't you confused? Didn't you make up  
17 this whole thing about a QQ.com address? Didn't -- aren't you  
18 unaware of the difference between a QQ.com application and an  
19 Apple ID?

20 They've had the ability if they really wanted to seek  
21 the truth to do all of these things. And for four months that  
22 she's been in contempt already, she's done nothing. And so I  
23 just think that giving her more time without changing the  
24 penalty or flipping the sanction that this penalty is going to  
25 accrue until you take those steps that everyone knows you

1 should take. I fear that we've already are going to be going  
2 into 2022, but we're going to be going months and months into  
3 '22, if, frankly, the pain is not felt or some urgency is not  
4 felt by Ms. Cui. I just think we've -- this week was too much  
5 of a repeat of last week.

6                   And despite what was very clear to me from the Court,  
7 an expression of frustration and that something needs to  
8 change. But we literally got nothing new in terms of iTunes or  
9 in terms of QQ. I don't think we could say with a straight  
10 face that based on their submissions we know anything more than  
11 we did a week ago. And so I fear that that is going to be the  
12 pattern that just continues, as it has continued since August.

13                   Thank you, Your Honor.

14                   THE COURT: Thank you, Mr. Halegua.

15                   I share in your frustration. I don't normally let  
16 issues continue for so long in regards to making a decision.  
17 When it's an issue of law, it's easy for me to make that  
18 decision quickly and promptly. Try to be as accurate,  
19 obviously, but here we've got some complicated issue that I too  
20 have been getting myself up to speed to clearly understand why  
21 and how this all means and their impact is still some basis to  
22 conclude that there is an outstanding ESI that has not been  
23 appropriately identified and accessed, even though your concern  
24 is, obviously, not the contents, because you can't even use the  
25 contents, even if we accessed it. The whole protocol is to

1 access and pour it into the third party. But identify, access,  
2 and pour it into the third party is the objective; not to open  
3 it up and start looking into the contents before all of this is  
4 either lost or too far back to be found.

5           But I hear your point that a lot of this could have  
6 and should have been done sooner. And whereas, the daily per  
7 diem was very modest in my opinion, of the \$200 per diem  
8 because of my understanding of Ms. Cui's financial background.  
9 And so I am at this point going to increase the daily per diem  
10 to again push Ms. Cui to get all of this, basically, done in  
11 the legal expectations of admissible evidence.

12           Mr. San Nicolas, that falls on you with declaration.  
13 And have them, just as Plaintiffs had Mr. Langton review,  
14 prepare the affidavit, and ready to testify. You need to have  
15 your expert, who you are relying on, be prepared to give me  
16 this detail, to explain it for Ms. Cui, to make her explanation  
17 reasonable, because it doesn't count -- come through counsel.  
18 As you just admitted, you're not the expert. I'm not the  
19 expert. So I need that information.

20           MR. SAN NICOLAS: Yes, Your Honor.

21           THE COURT: And I am going to, at this time, increase  
22 the daily per diem. Because I'm going to set this matter for a  
23 final hearing next month, any and all efforts to meet, get  
24 declarations, affidavits, depositions, you need to finish it  
25 up, Mr. San Nicolas.

1 MR. SAN NICOLAS: Yes, Your Honor.

2 THE COURT: I'm giving you the benefit that since  
3 last week, being given the holidays and other issues that one  
4 week was not enough time for you to get all of this completely  
5 set. But as pointed out, at this point, Ms. Cui has already  
6 been being sanctioned. So as to this issue, it is a finding of  
7 contempt that includes a possible jail term. This is the last  
8 order to show cause issue in this matter.

9 MR. SAN NICOLAS: Yes, Your Honor.

10 THE COURT: We resolved all the others. The rose  
11 gold cellphone. All the -- the unpaid TLS invoice. Now, we're  
12 talking about two ESI data issue regarding the iTunes account  
13 as well as a QQ account to an iCloud -- linked to an iCloud,  
14 that's the last ESI backup data issue.

15 If this can't be resolved between now, and I'm  
16 looking at January 27 -- let's see. I got some motion hearings  
17 at 9 o'clock already. I'll move that one up to -- or to the  
18 afternoon.

19 MR. SAN NICOLAS: I'm sorry, Your Honor, did you?

20 THE COURT: I'm looking -- I have another matter set  
21 in the morning already. I was going to set it for  
22 January 27th, a Thursday.

23 MR. SAN NICOLAS: Would it be in the afternoon,  
24 Your Honor?

25 THE COURT: And I'm going to set it for -- oh, I have

1 another matter at 9 a.m. So I'll move that maybe for about an  
2 hour.

3 So we'll -- we'll stay with the 8:30, but I'll move  
4 the other matter that's currently set for 9 for a later time in  
5 the morning.

6 MR. SAN NICOLAS: Your Honor, can I just ask, is it  
7 January 27 at 8:30?

8 THE COURT: Yes.

9 MR. SAN NICOLAS: Thank you.

10 THE COURT: January 27, 2022, at 8:30 a.m. This  
11 will be, basically, an evidentiary hearing, possibly, on the  
12 pending issue of Ms. Cui's contempt -- the Court's finding of  
13 contempt of Ms. Cui in regards to the ESI backup data that's  
14 still lingering pertaining to the iTunes backup, as well as an  
15 access to -- potential access to a QQ iCloud account.

16 MR. SAN NICOLAS: Thank you, Your Honor.

17 THE COURT: And I think it's very telling,  
18 Mr. San Nicolas, that you need to get all the details clarified  
19 with yourself and your client and your expert.

20 When Ms. Cui says, "Well, I just wanted them to fix  
21 it," I don't need to know the details.

22 Well, then you need to get someone else to break it  
23 down because now her definition and ours here in Court of:  
24 Well, you may have said "fix it," but what we're looking for is  
25 ESI data --

1 MR. SAN NICOLAS: Yes --

2 THE COURT: -- and there's evidence that somebody  
3 made a backup.

4 MR. SAN NICOLAS: Yes, Your Honor.

5 THE COURT: So all of these needs to be resolved. I  
6 don't intend and I don't anticipate this matter to go beyond  
7 January 2022 on this limited issue. I will make that a clear  
8 point, Mr. Halegua.

9 And as to the daily sanctions, to ensure that we get  
10 this finalized, I am going to increase the daily per diem if  
11 you can get all of this resolved. I'm going to increase it to  
12 \$1,000 a day.

13 This needs to be acted on promptly. It's been  
14 months. And seeing it from, shall we say, our perspective,  
15 meaning the individuals who have been with the case since its  
16 inception, it is frustrating.

17 Mr. San Nicolas, you came on board, was it in,  
18 August, September?

19 MR. SAN NICOLAS: Your Honor, I was local counsel  
20 beginning, I believe, July.

21 THE COURT: July.

22 MR. SAN NICOLAS: But I came on board as the lead in  
23 November 8th.

24 THE COURT: There's a lot. And as you can see from  
25 the March incident, March 2022, the June report, and then you

1       came on board in July, and this has been ongoing. So it's been  
2       taxing on both Plaintiffs and the Court. If it's going to tax  
3       us, then there has to be a basis to convince Ms. Cui to get  
4       this all resolved. And the daily per diem that will be  
5       increased will begin tomorrow.

6                   Because the prior sanction was at two hundred.

7                   MR. SAN NICOLAS: Two hundred.

8                   THE COURT: Now, starting tomorrow.

9                   If you can get all of this done in the next week or  
10       two, get it done, get it filed.

11                  MR. SAN NICOLAS: Yes, Your Honor.

12                  THE COURT: There's a lot of incentive here, because  
13       I really would rather avoid any -- imposing any jail term  
14       because I believe there is a way to get this resolved short of  
15       that. But it's not by delaying, delaying, delaying. And on  
16       our perspective, that's what's -- that's what we see, and it's  
17       going to come to an end in January.

18                  All right. That is the order. We'll see you all  
19       next year.

20                  MR. HALEGUA: Your Honor, may I just make a --

21                  MR. SAN NICOLAS: Thank you, Your Honor.

22                  MR. HALEGUA: -- clarifying point, Your Honor?

23                  THE COURT: Yes. Mr. Halegua?

24                  MR. HALEGUA: Thank you. Two small things: One is,  
25       I think, we keep using the term "iTunes backup," and I think

1 just for the sake of clarity, we don't want to -- just want to  
2 know if at some point one backup was created somewhere, also an  
3 explanation of the fact that there was this initialization,  
4 right, which means the phone was wiped clean and that data  
5 was -- not just: I didn't have anyone back up the phone,  
6 that's great. But, also, who put stuff onto the phone, right,  
7 and where did that come from? And I -- just to avoid any  
8 cuteness, I think that just needs to be clear, is the first  
9 point.

10 THE COURT: Okay. I understand your point,  
11 Mr. Halegua. Thank goodness I can actually follow that --

12 MR. SAN NICOLAS: Your Honor --

13 THE COURT: -- Mr. San Nicolas, I'm pretty sure you  
14 can follow that.

15 MR. SAN NICOLAS: -- if Mr. Halegua could repeat. I  
16 mean, I'm sorry. I was --

17 THE COURT: This whole thing.

18 MR. SAN NICOLAS: -- listening to my client and  
19 didn't catch --

20 THE COURT: All right. So, Mr. San Nicolas --

21 MR. SAN NICOLAS: -- the last maybe 30 seconds.

22 THE COURT: Okay. His concern -- Mr. Halegua's point  
23 is not to be narrow, but to be explicit and be clear that it's  
24 actual broadly. When I say, "iTunes backup," it's not just the  
25 cellphone was tendered and then backed up, and that's the

1 evidence that we need to clarify -- or Ms. Cui needs to  
2 clarify. It's: The cellphone was tendered to someone who used  
3 an iTunes application and somehow data was backed up, but  
4 somehow also that same cellphone was wiped clean, and then  
5 there's some installation of certain applications. So in other  
6 words, the full usage --

7 MR. SAN NICOLAS: Yes. Understood, Your Honor.

8 THE COURT: -- of iTunes, not just the retrieving and  
9 backing up of data, but everything about the, I guess, it could  
10 have been that 20 minutes, could be. What happened? I mean --

11 MR. HALEGUA: Yes, Your Honor.

12 THE COURT: -- there's so many scenarios that I  
13 already think of saying, "Well, I just want it to work. If it  
14 means delete everything, get it started again so I can just get  
15 using it," I don't know. And that's what Mr. Halegua  
16 previously mentioned.

17 But, yes, the scope of this iTunes backup with  
18 explanation, it's not just literally the backup of the data  
19 from the cellphone, but also what happened after the data was  
20 backed up; was it somehow transferred somewhere else and then  
21 the old cellphone was restored and that's the one that went to  
22 New York. I want to know the details.

23 And, basically, whoever -- whoever the individual is,  
24 this technician, apparently, could be Mr. Chen, if he's the one  
25 who did so, then he needs to prepare both a declaration,

1 possibly make himself available here.

2 MR. SAN NICOLAS: Yes.

3 THE COURT: Because I sense that we're going to be  
4 asking more questions.

5 Do you understand, Mr. San Nicolas?

6 MR. SAN NICOLAS: Understood, Your Honor.

7 THE COURT: And was I clear enough, Mr. Halegua,  
8 about the point that you wanted to make?

9 MR. HALEGUA: Yes. Absolutely, Your Honor.

10 THE COURT: All right.

11 MR. HALEGUA: And second, was just procedurally, you  
12 know, again, so we're not sort of -- us and the Court are not  
13 blindsided with the presentation of evidence on that day and  
14 forced to kind of scurry to respond without the advantage of  
15 any preparation. I look to the Court's guidance as well, but  
16 I'm thinking something like prior, you know --

17 THE COURT: Deadline.

18 MR. HALEGUA: -- fourteen- or ten-days prior --

19 THE COURT: Okay.

20 MR. HALEGUA: -- to the hearing, all declarations be  
21 submitted, all witnesses be identified, you know, if there's  
22 deposition --

23 THE COURT: All right.

24 MR. HALEGUA: -- transcript, they should be  
25 submitted.

1                   THE COURT: I hear your point. I hear your point.  
2 So the request is prior to the hearing, set a deadline for some  
3 of the filings so that both the Court and the opposing party  
4 has an opportunity to review and prepare. Said --

5                   MR. SAN NICOLAS: Understood, Your Honor.

6                   THE COURT: So --

7                   MR. SAN NICOLAS: Similar to our earlier -- our  
8 October evidentiary hearing, we'll -- we'll be providing -- I  
9 mean, we would expect --

10                  THE COURT: I'm setting a deadline of two weeks prior  
11 to the hearing, so that would be January 14th, apparently, if  
12 the hearing date is on the twenty -- I said 27th, so that would  
13 be January 13; so that's a deadline for Ms. Cui to file her  
14 report, her affidavits, her declaration, her list of witnesses,  
15 her exhibits. Share it with opposing counsel and the Court,  
16 that way, if there's something objectionable by the Plaintiff,  
17 that Plaintiff -- Plaintiffs' counsel can point out, then they  
18 will get that opportunity about a week, I guess or so.

19                  And if you need more time, you should at least  
20 consult with opposing counsel and look at what you can tender  
21 within that two weeks. With a thousand dollars a day, I can  
22 make things move. The sooner it's purged, the sooner that all  
23 of this will stop.

24                  Are we clear, Mr. San Nicolas?

25                  MR. SAN NICOLAS: Yes. Yes, Your Honor.

1                   THE COURT: So that is the additional deadline:  
2 Filings to be made two weeks prior to the hearing, which, in  
3 this instance, would be January 13, 2022.

4                   And then to the extent the Plaintiffs will provide  
5 the Court any reply, I'm going to set one week, that way I get  
6 to see your point of view, as well as, Mr. Halegua and  
7 Mr. Berline. And then if there's any other issues to be  
8 resolved, we'll have it at the hearing. But, hopefully, all  
9 the filings can make it a little bit more crystal clear. We'll  
10 learn some more about ESI.

11                  All right. At this point, we're going to recess.

12                  Happy New Year to you all, and please be safe.

13                  All right. Thank you.

14                  MR. YUMUL: Thank you, Your Honor.

15                  THE CLERK: Court is in recess.

16                  MR. WEINER: Thank you, Judge.

17                  THE INTERPRETER: Thank you, Your Honor.

18                  THE CLERK: Thank you to Counsel.

19                  (The proceedings concluded at 10:21 a.m.)

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1 CERTIFICATE  
2  
34 I, HEIDI M. DOOGAN, Official Court Reporter, in the United  
5 States District Court for the Northern Mariana Islands, hereby  
6 certify that pursuant to Section 753, Title 28, United States  
7 Code, the foregoing is a true and correct transcript of the  
8 stenographically-reported proceedings held in the  
9 above-entitled matter and that the transcript page format is in  
10 conformance with the regulations of the Judicial Conference of  
11 the United States.12 Date: January 8, 2022  
13  
1415 /s/ Heidi M. Doogan  
16 Heidi M. Doogan, RPR  
17 U.S. Court Reporter  
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